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GENERAL COUNSEL'S OPINION NUMBER 54-6, DATED 14 MAY 1954

Lump sum leave payments for a portion of unused leave must be repaid on reemployment under the same leave system.

TO PAYROLL AND TRAVEL BRANCH, FINANCE DIVISION

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1. We have reviewed this file giving particular attention to all of the points raised by the employee in his memorandum attached to [] dated 18 November 1953. After reviewing each point with particularity, we fail to find any new material that would take this case outside the usual refund provisions of the statute. The statute which governs the repayment practice is set forth in 5 USCA 61b and reads as follows:

"Whenever any civilian officer or employee of the Federal Government or the government of the District of Columbia is separated from the service or elects to be paid compensation for leave in accordance with section 61a of this title, or section 1474 of Appendix to Title 50, he shall be paid compensation in a lump sum for all accumulated and current accrued annual or vacation leave to which he is entitled under existing law. Such lump-sum payment shall equal the compensation that such employee would have received had he remained in the service until the expiration of the period of such annual or vacation leave: Provided, That if such employee is reemployed in the Federal service or in or under the government of the District of Columbia under the same leave system prior to the expiration of the period covered by such leave payment, he shall refund to the employing agency an amount equal to the compensation covering the period between the date of reemployment and the expiration of such leave period, and the amount of leave represented by such refund shall be credited to him in the employing agency."

2. We have checked with the Office of the General Counsel of the General Accounting Office who have advised that the leave system of the Department of the Army at the time in question was the same as the leave system of CIA. In view of this fact, we have no alternative but to hold the repayment of this sum necessary. The questions raised by the employee as to the exact date of his termination of employment and the amounts which are subject to repayment are questions of fact which this office is unable to verify or dispute. The allegation of the employee that he raised this question at the time he commenced his employment with this Agency should be given consideration in determining the amount and method of repayment but can have no bearing upon the legal obligation of this Agency to require repayment. It is a fundamental principle

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that a Governmental agency is not bound by the promises or assurances of its employees which are contrary to law. The requirements of the law as indicated above override the equitable features of requiring a GS-11 employee with a large family to repay the sum of \$2,563.10.

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LAWRENCE R. HOUSTON
General Counsel

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